

TTD and MMI after *Greer v. Sysco*: When Does TTD End?

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Temporary Total Disability

- One of three basic areas of statutory benefits under Missouri Workers' Compensation Law
- Routinely paid during authorized treatment when doctor takes employee off work, or issues activity restrictions that cannot be accommodated by employer

Routine Case

- Employee suffers compensable injury
- Employer's physician performs surgery and takes employee off work for healing period after surgery
- Employee returns to light duty, then to full duty
- Employer's physician places employee at MMI and releases from further treatment

What happens when a case isn't routine?

- What if employee seeks additional treatment on his own after employer's physician places him at MMI
- What if employee's additional treatment after the MMI date causes the physician to take claimant off work
- MMI = No More TTD (right?)

TTD Statutes

Section 287.020.6 :

The term 'total disability' as used in this chapter shall mean inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident

Section 287.149.1:

Temporary total disability or temporary partial disability benefits shall be paid throughout the rehabilitative process

400 week limit

Section 287.170:

For temporary total disability the employer shall pay compensation for not more than four hundred weeks during the continuance of such disability...

*400 weeks = 7.69 years

Other than 400 weeks
(or 7 ½ years)
when does TTD end?

“The Rehabilitative Process” as defined in *Greer v. Sysco*

REHABILITATE:

- To restore to a condition of health or normal activity by a process of medical rehabilitation

PROCESS:

- A progressive forward movement from one point to another on the way to completion

So – when does the ‘rehabilitative
process’ end?

Maximum Medical Improvement

- For many years MMI has been considered a bright-line date marking the end of TTD benefits
- MMI is not defined by statute but has its origins in case law
- The use of MMI date as the end of TTD benefits dates back to 1991 in the case *Vinson v. Curators of University of Missouri*

1991 – remember when?

- Operation Desert Storm
- Boris Yeltsin wins first ‘free’ election in Russia
- Beauty and The Beast hits movie screens
- NKOTB perform at halftime of Super Bowl XXV
- Average price of gas \$1.12 per gallon (even with the Gulf War)

MMI under *Vinson*:

- The Eastern District Court of Appeals adopted the Commission's interpretation of a medical provider's opinion of the employee's 'maximum treatment potential' to mean that the employee had reached 'maximum medical improvement'
- The Appeals Court in *Vinson* awarded TTD benefits for the period leading up to the date of MMI

MMI cases after *Vinson*

- TTD benefits are owed until the employee's medical condition has reached the point of maximum medical progress
 - Cooper v. Med. Ctr. of Independence (Mo.App. W.D. 1997)
- TTD benefits are due from the date of the injury through the date the condition has reached the point where further progress is not expected
 - Cardwell v. Treasurer State of Missouri (Mo.App. E.D. 1998)

Bottomline:

TTD ends at MMI

(or maybe not so much...)

Greer v. Sysco

- Injury date February 23, 2006: Greer was standing on a stationary forklift to scan a pallet containing inventory
- Greer's scanner gun malfunctions, causing him to lean forward to scan the pallet; in doing so, his left leg extends outside the running lines of his forklift
- Greer is injured when a co-employee drives by on another forklift, grabbing Greer's extended left foot and crushing it between the forklifts

Greer's Authorized Treatment

- Taken by ambulance to the hospital where left foot was placed in a cast
- Dr. Blair, an orthopedic surgeon, treated with physical therapy and pain medication
- FCE in August 2006 indicated claimant could work at the 'heavy' demand level
- Greer was released to return to work, but continued to have difficulty

Greer's Authorized Treatment

- Second FCE in October 2006 indicated work at the 'medium' demand level
- February 2007 Dr. Blair orders EMG/nerve conduction studies to evaluate for tenderness over tarsal tunnel of left foot
- EMG results were normal, but nerve conduction testing could not be completed due to pain intolerance

Greer's Authorized Treatment

- Dr. Blair ordered additional work hardening, then released Greer to resume full duty in March 2007
- Dr. Blair placed Greer at **Maximum Medical Improvement** on April 23, 2007
- Dr. Blair assessed 5% permanent partial disability of the left ankle

Greer's Authorized Treatment

- Claimant attempted to return to work but continued to have difficulty
- In July 2007 Dr. Grebing diagnosed left ankle and foot injury and left tarsal tunnel syndrome and provided a cortisone injection
- Greer was still unable to perform job and voluntarily resigned on November 7, 2007
- Employer did not authorize or pay for any further medical treatment after Greer resigned

Additional Treatment

- Greer sought treatment with a pain management specialist, Dr. Graham, in November 2007
- Dr. Graham found symptoms of tarsal tunnel but concluded there was a 'strong likelihood of functional overlay' so he did not offer pain management treatment

Additional Treatment

- Greer underwent physical therapy and various treatments with at least five physicians between November 2007 and December 2009
- In December 2009 Dr. Johnson, an orthopedic surgeon, diagnosed tarsal tunnel and a fixed deformity which caused Greer's foot to turn inward
- Dr. Johnson referred Greer to Dr. Mackinnon, a plastic surgeon, to evaluate his nerve pain

Additional Treatment

- On June 22, 2010 Greer underwent tarsal tunnel release surgery by Drs. Johnson and Mackinnon
- Dr. Johnson treated claimant for several months after surgery
- Greer had some improvement, but his foot eventually contracted to an inward position and he continued to have nerve pain
- Dr. Johnson recommended future pain management and released Greer from his care on February 4, 2011

Greer's TTD Claim

- Greer argued that he should receive TTD benefits for the period after the tarsal tunnel surgery on June 22, 2010 until Dr. Johnson released him from care on February 4, 2011
- Employer argued MMI = No More TTD
- Dr. Blair placed Greer at MMI on April 23, 2007 so no additional TTD benefits are owed after that date (regardless of more treatment)

Lower Court Decisions

- Administrative Law Judge held that Greer reached MMI on 4/23/07 and therefore no TTD benefits are owed after that date
- Labor and Industrial Relations Commission overturned the ALJ and determined Greer was entitled to additional TTD benefits

Missouri Supreme Court

- Agrees with Greer that TTD is owed:
“The plain language of section 287.149.1 does not mandate the commission arbitrarily rely on the maximum medical improvement date to deny TTD benefits, if the claimant is engaged in the rehabilitative process.”

Routine Case

- The Supreme Court noted that this is not an issue in the ‘routine’ case:

“It is plausible, and likely probable, that the maximum medical improvement date and the end of the rehabilitative process will coincide, thus, marking the end of the period when TTD benefits can be awarded.”

Unusual Case

- The Supreme Court explained that in the ‘unusual case’ MMI may not determine TTD:

“When the commission is presented with evidence, as here, that a claimant has reached maximum medical improvement yet seeks additional treatment beyond that date for the work-related injury in an attempt to restore himself or herself to a condition of health or normal activity by a process of medical rehabilitation, the commission must make a factual determination as to whether that additional treatment was part of the rehabilitative process.”

Greer Holding

- The Supreme Court then sets forth the primary take-away from *Greer* in regard to TTD benefits:

“If the commission determines the additional treatment was part of the claimant’s rehabilitative process, then he or she is entitled to TTD benefits pursuant to section 287.149.1 until the rehabilitative process is complete.”

Legislative Action

- Senate Bill 66 sponsored by Senator Dave Schatz would do the following:
- Define “maximum medical improvement” as the point at which the injured employee’s medical condition has stabilized and can no longer reasonably improve with additional medical care, within a reasonable degree of medical certainty
- In cases involving TTD, such benefits shall be terminated when claimant reaches MMI, unless the benefits are ended when claimant returns to work or are otherwise terminated under law

So – what happens now?

- The 'routine case' remains the same; we can still rely on the MMI date as the end of TTD
- The unusual case becomes more interesting; the Greer decision opens the door for TTD to be awarded even after the MMI date
- The claimant has to prove that the additional treatment after MMI was part of the rehabilitative process